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or falsity of which would influence the court in granting or refusing specific performance.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 10; Dec. Dig. § 6.*]

3. Specific Performance (§ 94*)—Contracts Enforceable—Mutuality.—Plaintiff's failure to perform a covenant, which is not a condition precedent, will not prevent him from enforcing specific performance of the contract.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 249; Dec. Dig. § 94.*]

4. Specific Performance (§ 3*)—Contracts Enforceable—Effect of Part Performance.—A party is entitled to specific performance of a contract to convey land which has been so far performed by him that failure to carry it out would operate as a fraud upon his rights.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 3; Dec. Dig. § 3.*]

SAXBY et ux. v. SOUTHERN LAND CO.

Jan. 14, 1909.

[63 S. E. 423.]

1. Fraud (§ 9*)—Deception Constituting.—If a person had an option to buy land, its sale and price during the option were wholly under his control, and his statement that it could not be bought for less than a certain amount was not such a false representation as afforded a cause of action for deceit.

[Ed. Note.—For other cases, see Fraud, Dec. Dig. § 9.*]

2. Fraud (§ 18*)—Materiality of Matter Represented.—A representation to purchasers by a person having an option on land that he owned it was immaterial, and hence not actionable fraud.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. § 16; Dec. Dig. § 18.*]

3. Fraud (§ 3*)—Taking Option for Speculation.—That an option on land is taken for purposes of speculation does not constitute fraud or unfair dealing of the person taking the option towards those to whom he sells the land.

[Ed. Note.—For other cases, see Fraud, Dec. Dig. § 3.*]

4. Fraud (§ 11*)—Misrepresentations as to Existing Facts.—A misrepresentation, the falsity of which is actionable, must be of an existing fact, and not the mere expression of an opinion, which is no fraud, however strong and positive the language.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 12, 13; Dec. Dig. § 11.*]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

5. Fraud (§ 11*)—Misrepresentations as to Matters of Opinion.—Statements by a vendor to a purchaser that the land contained about 150 acres of timber, of which about 20 acres had been burned over, that the timber when cut into cordwood would readily sell at the local stations on the railroad at \$4 per cord, and that the land was specially adapted to potato culture, and would by the use of fertilizer yield 100 bushels to the acre, were mere statements of opinion, and trade talk, and not statements of ascertained facts, and hence, though untrue, were not actionable as fraudulent representations.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 12, 13; Dec. Dig. § 11.*]

IVANHOE FURNACE CO. *v.* VIRGINIA & T. TELEPHONE CO. et al.

Jan. 14, 1909.

[63 S. E. 426.]

1. Telegraphs and Telephones (§ 12*)—Connection of Independent Lines—Interchange of Business—Rights of Patrons—Mandamus.—A patron of a mutual telephone company can demand thereof only the same service that it renders to other patrons of the same class, and can only require of another company the use of its system on the same terms accorded to the public generally, and hence mandamus will not lie on his behalf to compel the latter company to connect its lines and exchange service with the subscriber's company on the same terms and condition as it connected with a third company; these being matters of business policy to be determined by the companies for themselves, subject only to the visitatorial authority of the state.

[Ed. Note.—For other cases, see Telegraphs and Telephones, Dec. Dig. § 12.*]

2. Mandamus (§ 151*)—Necessary Parties.—Conceding that an interchange of connections and business between two telephone companies may be required, it cannot and will not be required in mandamus proceedings to which one of them is not a party.

[Ed. Note.—For other cases, see Mandamus, Dec. Dig. § 151.*]

EPES *v.* SAUNDERS et al.

Jan. 14, 1909.

[63 S. E. 428.]

1. Vendor and Purchaser (§ 80*)—Construction and Operation of Contract.—Under an agreement for the payment of a gross sum for a tract of land, on an estimate of a given number of acres, there is a presumption that the quantity influences the price to be paid, and that

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.